APPEAL NO. 041214
FILED JULY 8, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on May 4, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) reached maximum medical improvement (MMI) on April 9, 2003, with a 10% impairment rating (IR) as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appeals, disputing the determinations of MMI and IR. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained compensable disc protrusions at L3-4 and L5-S1. Sections 408.122(c) and 408.125(c) provide that the report of the designated doctor has presumptive weight and the Commission shall base its determinations of whether the employee has reached MMI and the IR on the report of the designated doctor unless the great weight of the other medical evidence is to the contrary.

On September 11, 2002, a designated doctor examined the claimant and certified on September 18, 2002, that the claimant had not yet reached MMI Subsequently a new designated doctor was appointed because the previous designated doctor could not meet the time frame requirements to set a designated doctor appointment. The designated doctor examined the claimant on April 9, 2003, and reported that the claimant reached MMI on April 9, 2003, with a 10% IR. The designated doctor, using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000), placed the claimant in Diagnosis-Related Estimate (DRE) Category III noting that evidence of radiculopathy was found by examination and EMG results. In a response dated November 25, 2003, to a letter of clarification, the designated doctor stated that he did not find evidence to support awarding DRE Category IV and stated the IR will remain 10%.

The hearing officer noted that the medical evidence presented by the claimant did not constitute more than a difference of medical opinion. The hearing officer found that there is not a great weight of medical evidence contrary to the opinion of the designated doctor and concluded that the claimant reached MMI on April 9, 2003, with a 10% IR as reported by the designated doctor. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that

the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge